

Corrections Advisory Council Subcommittee

Minutes

Aug. 1, 2006

DOC Annex – Conference Room

Helena

Members present: Rep. Gail Gutsche, chairwoman; Toole County Commissioner Allan Underdal; Cascade County Sheriff Dave Castle; and Sen. Jim Shockley. Absent were Reps. Tim Callahan and Veronica Small-Eastman.

Others present included: Department of Corrections Director Mike Ferriter; Montana State Prison Warden Mike Mahoney; Steve Gibson, administrator of the department's Youth Services Division; Bob Anez, DOC communications director; Deb Matteucci, DOC-DPHHS behavioral health facilitator; Cathy Gordon, representing the DOC Adult Community Corrections Division; Pat Gervais of the Legislative Fiscal Division; Brent Doig from the governor's budget office; and Scott Crichton, Montana ACLU; and Casey and Edward Rudd from the Connections re-entry program in Bozeman.

Rep. Gutsche called the meeting to order at 10:10 a.m.

Rep. Gutsche said the purpose of the meeting was to come up with recommendations for the full council based on information gathered by the subcommittee as it looked at ways of improving services and programs for offenders. She said the subcommittee tried to focus on special-needs offenders, those with drug and mental health problems, and women and Indian offenders.

Treatment options

Sheriff Castle asked about treatment programs inside secure facilities. With a limited amount of money available, the question is how should it be spent? The subcommittee should consider treatment for offenders before prison, while in prison and after they're out of prison, he said. Cascade County has a juvenile treatment court, but it is overloaded and lacks adequate staffing. Often, the young offenders are just handed over to corrections.

Rep. Gutsche said the subcommittee's job is not to determine the costs or source of funding for the proposals it recommends. The Legislature and the governor's office can decide the prices and whether to endorse the ideas based on cost. She said the subcommittee should make its decisions based on need. "It's all going to cost money," she said.

Mr. Crichton said some of the proposals will save money in the long run, so decisions should not be based on which ones cost money and which ones save money. He noted that none of the proposals call for construction of new cells, so money will be saved by not building more prisons and avoiding long-term commitments to fill those cells.

Mr. Doig said the nothing on the subcommittee's potential list of ideas will save money immediately.

Mr. Crichton said the subcommittee, just by looking at things in a new way, will be saving money.

Mr. Gibson said that mental health courts, if operated properly, will save money. He urged the subcommittee to choose what works to reduce recidivism, and not select ideas the members think are good.

The subcommittee members agreed to propose increasing – particularly in rural areas – the number of “treatment courts,” which is a term used to describe a blending of mental health and drug courts.

Rep. Gutsche discussed doing something different with those convicted of drug possession. She said California adopted a law requiring those convicted a first or second time of possession to undergo treatment rather than incarceration

Sen. Shockley said he doesn’t like mandatory sentencing and questioned whether such a law should apply to those with a second offense.

Rep. Gutsche emphasized that the California law does not apply to those convicted of any other offenses beyond possession. She said the offenders are not getting off by avoiding a sentence; they are still sentenced.

Sheriff Castle said often those caught, charged and convicted of drug possession are known by authorities to be involved in other crimes in the community, but possession is the only crime for which they can be prosecuted. He said he fears that offenders will simply plead guilty to possession in deals with prosecutors so they can avoid prison. He said busts for drug possession are often the easiest to make.

Rep. Gutsche said they may be the easiest, but that sending those people to prison isn’t working.

Sheriff Castle suggested that any drug treatment law in Montana should leave to the discretion of judges whether to send someone to a treatment program,, but that it should not be mandatory.

Mr. Crichton said the goal in California was to reduce the number of ex-felons by giving offenders a chance to do something different with their lives, such as returning to school or getting a job. If the state can persuade offenders there are other avenues to success other than the black market in drugs, the state will save money, he said.

Mr. Gibson said a drug conviction remains with a person for an entire life. Department of Corrections policy requires background checks and the agency may not be able to hire someone. With a drug conviction, even as a teen-ager, a person could forever be unable to hold certain jobs.

Mr. Crichton said if the goal is to keep the prison population down, then the state has to do more on the front end before offenders end up there.

Rep. Gutsche said, whether Montana copies the California law or tweaks it, the idea is to get first-time drug possessors somewhere other than prison. She said the subcommittee should endorse legislation to do that.

Sheriff Castle said first- and second-time drug possession offenders are not sent to prison from Cascade County. He said those being sent to prison have multiple convictions and have been before a judge many times.

Ms. Gordon said that greater availability of community treatment would help both offenders and their probation and parole officers. First-time possession offenders go to prison because there are not enough services to keep them out of trouble, and then violations of the conditions of their release land them in prison.

Mr. Crichton wondered what kind of treatment \$1,500 could buy, since that is the cost of keeping an offender in a regional prison for a month. Life is tough, especially when someone is poor, he said. More than half going to prison are doing so because of a technical violation of their parole or probation conditions. He said the California treatment law saved that state millions of dollars, even after spending on expanding treatment options.

Sen. Shockley said it is a rare that a first-time offender goes to jail.

Ms. Rudd said she was sentenced to 28 years for selling \$120 worth of marijuana and hash, although she served just two years.

Rep. Gutsche said that, while no judge may sentence a first-time offender directly to prison, the lack of community services results in the offender ending up there anyway. Requiring treatment could avoid that situation, she said. "Part of the charge of this subcommittee is to stop filling up the prisons," she said.

With no agreement on whether to recommend a mandatory treatment law, the members turned to a discussion of treatment courts.

Rep. Gutsche said such courts would have to serve youth as well as adults. More treatment courts for youth would allow the state to catch offenders at an earlier age and keep them out of the corrections system.

Mr. Underdal said more judges will be needed to make it work.

Rep. Gutsche said the subcommittee recommendation does not have to specify that.

Mr. Gibson said that, although there is no law allowing treatment courts, the state should have one on the books.

Sen. Shockley said the law does allow such courts, but the state has to expand their presence. If the 2007 Legislature were to mandate treatment courts throughout the state, it would place a strain on the judiciary.

Mr. Doig said the administration is considering expanding the existing drug courts.

Diversion payments

Mr. Gibson said this type of program would reward local governments for providing services and programs for offenders that reduce the number going to prison. He said the payments would have to be based on some sort of formula, such as crime rate and population. The payments to local governments could be used for anything involved in prevention efforts. Rather than spend money on new secure-care facilities, the state would be spending money on local prevention programs and services. This offers local control and recognizes that it costs less to put someone into treatment than in prison.

Rep. Gutsche said she likes the idea of having counties take more responsibility for their offenders.

Mr. Doig said this program would need a pot of money up front to get it started.

Mr. Gibson said parameters would be needed to restrict how money is spent.

Rep. Gutsche said more case managers and more chemical dependency and mental health counselors are needed in probation and parole offices around the state.

Mr. Gibson said using diversion payments for increased community services in the private sector would reduce the need for such staffing.

Mr. Doig said the administration already has provided additional money for some increase in case managers and counselors in the probation and parole offices.

Rep. Gutsche said diversion payments would still allow for further increases in case managers and counselors.

The subcommittee members agreed to propose a diversion payment program based on judicial districts.

Mr. Gibson raised the issue of Montana's need for a youth psychiatric hospital. He said staffing could be a problem. The state has not had one since 1987. He said the small number of youth served by such a facility would mean high costs.

Rep. Gutsche said she sees the need for such a hospital but that the project doesn't belong to corrections. She said the question should be presented to the full council at its meeting Sept. 8.

Housing

Rep. Gutsche discussed the idea of guide homes for adults, which would be private homes where residents are willing to take in an adult offender and offer him or her positive role models and mentoring that will put them on the right track. She said the problem is especially acute for sex offenders needing a place to stay for a while.

Mr. Gibson said standards and oversight would have to be established for such homes, which are now available for youth.

Ms. Rudd suggested some kind of summit for developing a system of guide homes and developing closer ties between such operations and the DOC.

The subcommittee agreed to recommend development of guidelines for guide homes.

Mental health treatment

Ms. Matteucci said a “map” of available mental health services is needed. She said she’s unsure of the status of funding for such a project through the Board of Crime Control. Local advisory councils could help gather information and that would be cheaper than hiring an outside consultant. An inventory of services is needed to support the proposal for treatment courts, she said.

Rep. Gutsche said a mental health counselor is needed in every prison in the state and such a position should be mandated. These would be responsible for managing the population of inmates with mental disorders, not for treating them, she said.

Mr. Ferriter said probation and parole officers have been begging for mental health managers in the prisons to be able line up appropriate placement of inmates once released.

Sen. Shockley said such managers are needed at all the regional prisons, so inmates in those facilities have the same help as those at Montana State Prison.

Mr. Mahoney said the prison doesn’t send inmates with chronic mental health problems to the regional prisons or the Shelby prison. He said the prison does need someone able to help with proper placement of inmates with mental problems, and that person must know the mental health system and have the ability to communicate well with community programs.

The subcommittee agreed to propose adding mental health case managers at more prisons to assist inmates with release planning and placement.

The subcommittee recessed for a lunch break at 12:10 p.m. and reconvened at 12:35 p.m.

Minutes of the June 19 meeting were approved unanimously.

Employment

The subcommittee discussed providing some money to newly released inmates to help them as they re-enter the community.

Rep. Gutsche said inmates leave prison with only \$100 in their pockets and how are they ever expected to get back on their feet?

Mr. Mahoney said the idea of some kind of stipend has merit, but questioned whether money should be available to those who refuse to get involved in prison programs and treatment and then just discharge their sentences.

Sen. Shockley said that, even for those “hard cases,” he would rather give them state money than have them rob a liquor store. Even for the ones who refuse to better themselves, “let’s at least give them a chance.”

Mr. Mahoney called it “counter-productive” to offer money to someone who fails to cooperate in prison.

Mr. Ferriter said those in pre-release centers receive a stipend, if the case manager agrees, to pay for the first month’s rent after leaving the center. The check is written to a landlord for rent or to a business from which an offender needs to buy tools for his job.

Mr. Crichton suggested calling a payment a “pre-employment stipend” and link the availability to behavior as an incentive for an offender to behave while in prison.

Rep. Gutsche said a pool of money is needed, along with criteria that must be met in order to receive it. She said the money should not go directly to the offender. Someone who refuses treatment programs in prison would be ineligible for the money.

Mr. Underdal suggested some inmates should be able to qualify for more of a stipend based on the amount of money they were able to save while in prison.

Ms. Matteucci said one problem faced by newly released inmates is a lack of coverage for prescription drugs or difficulty in obtaining coverage. Offenders need seed money to obtain their medicine. That money could be repaid when an offender qualifies for a pharmacy benefit and receives payment, she said.

The subcommittee agreed to propose a stipend program for inmates leaving prison.

Good time

Mr. Mahoney asked what the incentive would be to restore this program. He said it created numerous legal battles in the past over how sentences were calculated before being abolished by the Legislature. He said a better solution to restoring good time would be to simply reduce sentences for good behavior.

Sen. Shockley said the legal battles were created because the DOC “kept screwing it up.” He called the old system “the most complicated, irrational system I have ever seen.” No one knew what good time was so there was no incentive for inmates to try to obtain it.

Mr. Mahoney said the Legislature was to blame for some of the problem. Every time lawmakers changed the system, or it was altered by changes in administrative rules or department policy, staff had to go back and change all the sentence calculations.

Mr. Ferriter said times have changed since good time was abolished. Victim advocates have a problem with granting inmates good time. Also, meth and DUI treatment programs already allow for reduced sentences, and DOC commitments have the ability to be released early. In addition, inmates can get into pre-release centers 24 months before they are eligible for parole.

Ms. Rudd said being eligible for a pre-release center doesn't mean an inmate gets to go to one. She said local screening committees can determine who gets into a center.

Mr. Ferriter said that, under the old system, an inmate would have his sentence reduced by 13 days for every month in prison, regardless of behavior. It got to the point where good time was awarded to inmates just because the prison was so overcrowded.

Mr. Underdal said he opposes creating another means of sentence reduction, given the opposition from victim advocates.

Rep. Gutsche suggested creating a professional, full-time parole board and leave this issue of good time to that group to handle.

Mr. Mahoney said other states with such parole boards do not conduct hearings when a person is eligible for parole and they have completed their treatment plan. Those individuals are automatically paroled. That policy reduces the need for hearings. He wondered if the National Institute of Corrections has data on how many states have professional, full-time parole boards.

Sen. Shockley said he did not know if a professional board would be better than the existing system, but that it could not be any worse. He referred to the present system as a "kangaroo court."

Ms. Rudd said mandatory parole for those with a record of good behavior and completing treatment would be a huge incentive for inmates.

Rep. Gutsche said she does not want to set a lot of inmates free if they have no place to go.

Mr. Ferriter said professional parole boards are fairly common in other states and that there would be plenty of business to keep a full-time board busy.

Rep. Gutsche said the staff of the state Board of Pardons and Parole should be asked to find out what other states have.

The subcommittee agreed to propose creation of a professional, full-time parole board responsible for developing parole incentives.

Sex offenders

Rep. Gutsche said housing and ongoing treatment are two needs for this group of offenders. One question is whether completion of treatment should be required before a sex offender is released from prison. Judges need to be educated on the need to mandate treatment completion. Classification of sex offenders also needs to be addressed, she said.

Mr. Ferriter predicted some legislation will be proposed in the next session that will deal with mandatory minimum sentences for sex offenders and lifetime registration. He said there are plenty of people who believe all sex offenders should be locked up forever.

Sheriff Castle said people see drug users and sex offenders very differently when it comes to their likelihood of re-offending.

Mr. Mahoney asked whether it is appropriate that the state's only inpatient sex offender treatment program is at Montana State Prison. He said sex offenders in prison often worry about the stigma of getting involved in treatment programs. In addition, the public sentiment about sex offenders makes it difficult to get sex offenders out of prison.

Rep. Gutsche said the state needs more inpatient treatment outside of the prison.

Mr. Ferriter said finding sex offender therapists is difficult because there are few of them in the state and many get stuck with unpaid bills for treating offenders. But he said access to such therapists is critical, for without them, an offender will re-violate. The scarcity of therapists means offenders have to travel long distances for treatment.

Ms. Gordon suggested the labels should be different for different types of sex offenders.

Rep. Gutsche said requiring a sex offender to register for life may mean that person cannot get a job or place to live. Mandatory sentences should be limited to the worst of the sex offenders.

The subcommittee rejected a proposal by Mr. Crichton that the panel endorse a policy in which sex offenders would be kept in the least-restrictive environment consistent with public safety.

The subcommittee also did not approve a proposal by Rep. Gutsche that less-serious sex offenders (mooners, peepers, statutory rapists) be categorized differently than predatory sex offenders.

The subcommittee did support a suggestion by Ms. Matteucci that the council recommend to the Workforce Development Task Force that a greater emphasis be placed on satisfying the need for more sex therapists to provide community services.

The subcommittee also favored a proposal by Rep. Gutsche that sex offender treatment capacity in the prisons be expanded.

Sen. Shockley said he has put in a bill to differentiate among the different types of sex offenders.

Ms. Rudd said some violent offenders get branded as sex offenders because they are all included in the same registry.

Rep. Gutsche said those committing less serious sexual offenses should face shorter prison sentences and not be permanently branded a sex offender for the rest of their lives.

The subcommittee agreed to propose separating violent from sexual offenders in the state registry and to support changes in the classification system for lower-risk offenders that would allow earlier removal from the registry.

The subcommittee set no date for another meeting.

The subcommittee adjourned about 2:45 p.m.

Prepared by Bob Anez